

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TRAVELERS CASUALTY AND SURETY COMPANY as
Administrator for RELIANCE INSURANCE COMPANY,
Plaintiff,

vs.

DORMITORY AUTHORITY - STATE OF NEW YORK,
TDX CONSTRUCTION CORP. and KOHN PEDERSEN
FOX ASSOCIATES, P.C.,

Defendants.

DORMITORY AUTHORITY OF THE STATE OF NEW
YORK and TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

vs.

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.

TRATAROS CONSTRUCTION, INC. and TRAVELERS
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

vs.

CAROLINA CASUALTY INSURANCE COMPANY;
BARTEC INDUSTRIES INC.; DAYTON SUPERIOR
SPECIALTY CHEMICAL CORP. a/k/a DAYTON
SUPERIOR CORPORATION; SPECIALTY
CONSTRUCTION BRANDS, INC. t/a TEC; KEMPER
CASUALTY INSURANCE COMPANY d/b/a KEMPER
INSURANCE COMPANY; GREAT AMERICAN
INSURANCE COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA.;
UNITED STATES FIRE INSURANCE COMPANY;
ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.
f/k/a COMMERCIAL UNDERWRITERS INSURANCE
COMPANY; ZURICH AMERICAN INSURANCE
COMPANY d/b/a ZURICH INSURANCE COMPANY;
OHIO CASUALTY INSURANCE COMPANY d/b/a OHIO
CASUALTY GROUP; HARLEYSVILLE MUTUAL
INSURANCE COMPANY (a/k/a HARLEYSVILLE
INSURANCE COMPANY.); JOHN DOES 1-20 and XYZ
CORPS. 1-12,

Fourth-Party Defendants.

Case No. 07-CV-6915 (DLC)
ECF CASE

**TRATAROS
CONSTRUCTION, INC.'S
ANSWER TO
COUNTERCLAIM OF
DAYTON SUPERIOR
SPECIALTY CHEMICAL
CORP. a/k/a DAYTON
SUPERIOR CORPORATION**

Third-Party Defendant/Fourth-Party Plaintiff, Trataros Construction, Inc. (“Trataros”), by and through their attorneys, Dreifuss Bonacci & Parker, LLP, as and for its Answer to the Counterclaim of Fourth-Party Defendant, Dayton Superior Chemical Corp. a/k/a Dayton Superior Corporation (“Dayton Superior”) alleges as follows:

1. The allegations contained in the unnumbered paragraph entitled “Counterclaim Against Trataros Construction, Inc.” (hereinafter, the “Counterclaim”) are denied.

WHEREFORE, Trataros demands judgment against Dayton Superior for the following relief:

- a. dismissal of the Counterclaim with prejudice;
- b. award of attorneys fees, costs and disbursements; and
- c. such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Dayton Superior’s Counterclaim fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Dayton Superior lacks standing to pursue claims against Trataros.

THIRD AFFIRMATIVE DFEFENSE

The Counterclaim is barred by the provisions of the appropriate statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the equitable doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the equitable doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred due to the absence of privity of contract between Dayton Superior and Trataros.

EIGHTH AFFIRMATIVE DEFENSE

Any damages allegedly sustained by Dayton Superior were and/or will be caused in whole or in part by the culpable conduct of Dayton Superior, as a result of which Dayton Superior's Counterclaim is barred or diminished in the proportion that such culpable conduct has caused and/or will cause their alleged damages.

NINTH AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, as a result of Dayton Superior's breach(es) of warranties, express and/or implied, covering its products utilized on and/or incorporated into the Baruch College, Site B project.

TENTH AFFIRMATIVE DEFENSE

In the event Dayton Superior has sustained and/or will sustain damages as alleged in its Counterclaim, then such damages were/will be sustained as a result of the conduct of persons and/or entities other than Trataros, and for whose conduct Trataros was not responsible.

ELEVENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of mitigation of damages.

TWELFTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by the doctrine of avoidable consequence.

-and-

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TO: see attached Service List

1:07-cv-06915-DLC Travelers Casualty and Surety Company v. Dormitory Authority State of New York et al

Denise L. Cote, presiding

Date filed: 08/01/2007

Date of last filing: 01/11/2008

Attorneys

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P.C.

(Defendant)

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(Cross

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Company

(Counter

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Company

(Counter

Defendant)

Travelers

**Casualty and
Surety
Company**
*(Cross
Claimant)*

**Travelers
Casualty and
Surety
Company**
(Plaintiff)

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**Travelers
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Surety
Company**
*(Cross
Claimant)*

**Travelers
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Surety
Company**
(Plaintiff)

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Authority State
of New York**
*(Counter
Claimant)*

**Dormitory
Authority State
of New York**
(Cross

Claimant)

**Dormitory
Authority State
of New York**
(Defendant)

**TDX
Construction
Corp.**
*(ThirdParty
Plaintiff)*

**TDX
Construction
Corp.**
*(Counter
Defendant)*

**TDX
Construction
Corp.**
*(Cross
Defendant)*

**TDX
Construction
Corp.**
(Defendant)

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Defendant)*

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**Superior
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Chemical Corp.**

representing

*(Fourth Party
Defendant)*

**Dayton
Superior
Specialty
Chemical Corp.**

*(Counter
Claimant)*

**Dayton
Superior
Specialty
Chemical Corp.**

*(Cross
Claimant)*

**Dayton
Superior
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*(Cross
Defendant)*

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representing

*(Counter
Defendant)*

**Travelers
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Surety**

Company
(Cross
Claimant)

**Trataros
Construction,
Inc.**
(ThirdParty
Defendant)

**Trataros
Construction,
Inc.**
(Counter
Claimant)

**Trataros
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Inc.**
(Counter
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**Trataros
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Company**
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**Carolina
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Company**
(Counter
Claimant)

**Carolina
Casualty
Insurance
Company**
(Cross
Claimant)

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